BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish and Interconnection Agreement With Verizon North Inc.	)))))	Case No. 02-876-TP-ARB

ARBITRATION AWARD

Upon consideration of all of the pleadings as well as the record as a whole, the Commission hereby issues its arbitration award

APPEARANCES:

Mr. James R.J. Scheltema, 5042 Durham Road West, Columbia, Maryland 21044; Mr. William J. Rooney, Jr., 89 Access Rd., Norwood Massachusetts 02062; and Bricker & Eckler, LLP, by Mr. Thomas O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of Global NAPs, Inc.

Thompson Hine, LLP, by Mr. Thomas E. Lodge and Ms. Carolyn S. Flahive, 10 West Broad Street, Columbus Ohio 43215; Mr. A. Randall Vogelzang, 600 Hidden Ridge, Irving, Texas 75038; Hunton and Williams, by Ms. Kelly L. Faglioni and Mr. Edward P. Noonan, Riverfront Plaza, East Tower, 951 East Byrd Street; and Mr. David K. Hall, 1515 North Court House Road, Arlington, Virginia 22201, on behalf of Verizon North Inc.

I. BACKGROUND:

On April 10, 2002, Global NAPS, Inc. (Global or GNAPs) filed in this case, pursuant to Section 252(b)(1) of the Telecommunications Act of 1996 (the Act),[1] a petition for Commission arbitration of unresolved issues arising out of interconnection agreement negotiations between itself and Verizon North Inc. f/k/a GTE North Incorporated (Verizon). Formal negotiations regarding the terms of an interconnection agreement, between the two parties to this case commenced on January 19, 2001. Section 252(b)(4)(C) of the Act requires the Commission to conclude the resolution of the unresolved issues not later than nine months after the date on which the local exchange company (LEC) receives the request for interconnection. In this case, however, the parties have mutually agreed; both to extend the negotiation window and to allow the Commission to have until September 12, 2002, to issue its arbitration award.

The Commission has established guidelines in order to carry out its duties under Section 252 of the Act, which apply in arbitration cases such as this one. See, *In the Matter of the Implementation of the Mediation and Arbitration Provisions of the Federal, Telecommunications Act of* 1996, Case No. 96-463-TP-UNC (entry issued July 18, 1996). Under those guidelines, an arbitration panel, composed of members of the Commission's staff, is assigned to recommend a resolution of the issues in dispute if the parties cannot

[1] Codified at 47 U.S.C. 151 et. seq.

reach a voluntary agreement. Also, certain procedural requirements are normally observed: e.g., the nonpetitioning party may formally respond to the arbitration petition; a procedural conference is held between the panel and the parties; arbitration packages are filed; an arbitration hearing (with opportunity for cross-examination of witnesses) is held; parties are extended a chance to make post-hearing arguments, either through oral argument or by filing formal briefs; a panel report, setting forth the panel's recommended resolution of outstanding issues is submitted to the Commission for consideration; and the parties are provided an opportunity to file exceptions to the panel report and/or replies to any such filed exceptions.

Indeed, in this case, each of these procedural safeguards have been observed. Notably, a panel report was issued in this case on July 22, 2002, which made recommendations on each of the 12 issues presented for arbitration in this case, numerically identified as issues 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, and 14. Exceptions to the panel report were filed on July 29, 2002, by both GNAPs and Verizon. GNAPs took exception to the panel's recommendation on issues 1, 2, and 4. Verizon took exception to the panel's recommendation on Issue 7 and, in addition, through its filed exceptions, is seeking to have the Commission make clarifications to the panel's recommendations on issues 1 and 2. Verizon, on August 7, 2002, filed a reply in response to GNAPs' exceptions. GNAPs has chosen not to file a reply to Verizon's exceptions.

II. ISSUES FOR ARBITRATION

Neither party took exception to the panel's recommendations on issues 3, 4, 5, 8, 10, 11, 12, 13, and 14. Accordingly, the Commission will, with regard to each of those nine issues, adopt by reference both the panel's discussion and its substantive recommendations, as set forth in the panel report issued on July 22, 2002. What follows, immediately below, is a substantive discussion of the panel's recommendations, the exceptions, and any filed replies to the exceptions pertaining to the four remaining issues, namely, issues 1, 2, 4, and 7.

Issue 1: Should either party be required to install more than one point of interconnection (POI) per LATA?

Issue 2: Should each party be responsible for the costs assodated with transporting, telecommunications traffic to a single POI?

The Panel's Recommendation

The panel determined Issue 1 to be largely resolved, but noted the parties had not agreed on the contract language relative to this issue. The panel recommended Global not, be required to establish more than one POI per LATA within the carrier's network. The panel noted that its recommendation was consistent with Commission awards in Case Nos. 01-2811-TP-ARB and 01-3096-TP-ARB,[2] Case No. 00-1188-TP-ARB,[3] and the Commission's Local Service Guidelines (LSG) adopted in Case No. 95-845-TP-COI (845).

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2 *In the Matter of the Petition of Global NAPs, Inc. for* Arbitration of *Interconnection Rates, Terms* and Conditions and *Related Arrangements with United* Telephone *Company dba Sprint* and *Ameritech Ohio,* Arbitration *Award,* Case Nos. 01-2811-TP-ARB and 01-3096-TP-ARB ("*GNAPS Consolidated* Arbitration").

The panel noted that Issue 2 in this proceeding is the same Issue 2 the Commission decided in the *GNAPs Consolidated Arbitration,* and recommended the Commission determine Verizon is permitted to charge its TELRIC rate to transport traffic beyond a local calling area where Global has no POI, to a distant POI in another local calling area, provided the call does not originate and terminate in the same local calling area.

GNAPs' Exceptions

In its Exceptions, Global combines Issues 1 and 2 and initially addresses Issue 1 for the most part, then mostly moves on to Issue 2. First, Global takes exception to essentially both of the panel's recommendations for Issues 1 and 2, stating the panel erred because it did not have the benefit of the Federal Communications Commission's (FCC's) Virginia *Arbitration Order,*[4] issued by the FCC's Wireline Competition Bureau (WCB), which clarifies federal law governing these issues. Global asserts that federal law mandates that Global is entitled to establish a single point of interconnection ("POI") per LATA and that Verizon is financially responsible for delivering Global bound traffic from Verizon's customers to the single POI (Global's Exceptions at 3). Global states that its assertions were confirmed by the FCC in the *Virginia Arbitration Order (Id.* at *3-4).*

Global argues that while Verizon does not directly deny Global's right to interconnect at a single POI in a LATA, Verizon indirectly prevents Global's ability to do so by imposing financial burdens when it elects to do so *(Id.* at *4).* Global maintains that Verizon's proposed imposition of additional transport charges based on a fictional interconnection point precludes Global from interconnecting solely at a single POI in a LATA *(Id.* at *5).* Also, Global argues the implementation of Verizon's interconnection agreement language would be a violation of Section 253 of the Act *(Id.).* In addition, Global cites the *Local Competition Order*[5] and the *Texas 271 Order*[6] in support of its argument that Verizon must provide Global with a single point of interconnection per LATA under federal law *(Id.).* Further, Global claims the FCC WCB specifically examined Verizon's proposed Verizon geographically relevant interconnection point (VGRIPs) proposal and rejected it in the *Virginia Arbitration Order* (Global's Exceptions at *6).*

In the Matter of AT&T Communication of Ohio, Inc.'s and TCG Ohio's Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related *Arrangements with Ameritech Ohio, Case* No. 00-1188-TP-ARB.

Memorandum Opinion and Order, *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket* No. 00-218; *In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of* the *Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration,* CC Docket No. 00-249; *In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.,* CC Docket No. 00-251; DA 02-1731 (July 17, 2002).

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, *CC* Docket *96-98,* FCC 96-325.

Application of Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Report and Order, FCC 00-238, CC Docket No. 00-65.

Next, Global argues Verizon is prohibited by federal law from charging Global "for costs on its side of the network as determined by the point of interconnection between the carriers" *(Id.* at 7). Specifically, Global states "each party is responsible for transporting traffic on its 'side' of the POI, and is obligated to compensate the terminating Party for the transport and termination of its originating traffic from the POI to the designated end user via reciprocal compensation" *(Id.*). Global argues the panel's recommendation should not be accepted in light of 47 C.F.R Sections *51.305(a)(2)* and *51.703(b),* the FCC's Order approving SBC's 271 application for Kansas and Oklahoma, and its Intercarrier Compensation NPRM (Id. at 7-8).

discussing issues related to the finanaal implications of establishing only a single POI in a LATA *(Id.* at *8-9).* Global states that it "bases its argument against the imposition of

clarification that Verizon's proposed contract language should be adopted for Issue 1 because Global's proposed language is "problematic and confusing" *(Id.* at 1-2). Verizon is confused by Global's Network Interface Device reference in its definition of **POI,** as well as Global's definition of POI as a whole (Id. at *2).*

Next, Verizon requests the Commission *to* clarify that Verizon's proposed contract language for Issue **2** is being adopted as well *(Id.* at *3).* Verizon states that its proposed contract language is consistent with the Commission's award **and** entry on rehearing in the *GNAPs* Consolidated *Arbitration* and should be adopted *(Id.* at **4).** *Also,* Verizon requests Clarification of the panel's recommendation because it believes the panel recommendation may not be consistent with the Commission's **entry** on rehearing in the *GNAPs Consolidated Arbitration* because of the confusing relationship between "exclusively local traffic" and "longhaul calls" *(Id.).*

In its reply to Global's exceptions, Verizon argues that Global, in comparing **the** panel report to the *Virginia Arbitration Order,* inaccurately cites deficiencies in the panel's recommendations (Verizon's Reply, at 1-8). Verizon asserts that "[t]he *Virginia Arbitration Order* is not 'definitive' authority that controls the **Commission's** resolution of Issue 2" (Id. at 3). Verizon contends the *Virginia Arbitration* Order is **still** subject to **review** by the FCC and is not yet final, and, therefore, the Commission should not ignore Ohio's **own** rules and precedent in an effort to mirror the *Virginia Arbitration Order (Id.* at 4-6).

Further, Verizon states that, unlike Global, the various petitioners in the *Virginia Arbitration Order* recognized Verizon may deliver its originating traffic to a point that is different from where the **CLECs** would deliver their originating traffic *(Id.* at *7).* Verizon asserts the FCC **WCB** recognizes this is permissible under FCC rules as well *(Id.).* In the *Virginia Arbitration Order,* Verizon states the WCB "emphasized that the single **POI** rules, benefit[s] a CLEC by allowing it to 'interconnect for delivery of *its* traffic to the incumbent, **LEC** network at a single point' and that **this** rule 'does not prevent the parties from agreeing that the incumbent may deliver its traffic to a different point or additional points that are more convenient for it'" (Id.) Verizon argues that Global, in contrast, refuses to, recognize that Verizon may deliver traffic to a point different from where Global would, (Id.).

In conclusion, Verizon states this Commission's rules and precedent compels the Commission to adopt Verizon's proposed contract language as Global provides no basis to do otherwise (*Id.* at 8).

Arbitration Award

The **FCC** has promulgated **rules** and addressed a ***variety*** of issues related directly or indirectly to reciprocal compensation since the passage of the Act. These rules and, guidelines, while complex, do give the state commissions a reasonable framework against which to decide arbitrated issues. These rules and guidelines cannot be easily nor properly applied or examined outside of the context of each other. It is important for **this,** Commission to apply certain of the FCC's guidelines in a manner that does not interfere with other **FCC** guidelines. This can be difficult, especially when it is not always clearly

evident where the intentions of existing federal guidelines intersect with each other, and when we are obligated to apply Ohio's own local service guidelines as well.[7]

In our arbitration award in the *GNAPs Consolidated Arbitration* for Issues 1 and 2, we agreed with the panel, which concluded that Issue 1 was resolved and recommended that Global be permitted to establish one POI per LATA, and adopted its recommendation, recognizing that it was consistent with previous Commission arbitration awards[8] and 47 C.F.R. Section 51.305 *(GNAPs Consolidated Arbitration* Award, at *3-4).* This finding is analogous to the panel's recommendation in this proceeding, and both are consistent with the WCB's *Virginia Arbitration Order:* thus, we adopt the panel's recommendation. To be clear, Global may designate one POI within Verizon's network per LATA;[10] however, the transport obligations associated with transporting traffic to the POI are addressed by Issue 2.

Global is correct in citing the WCB's *Virginia Arbitration Order* discussion relative to Issue 2, but fails to identify the other discussion in the order relevant to Issue 2. Apparently, Global did not recognize how the WCBs decision on Issue V-4 (LATA-Wide Reciprocal Compensation) related to its position. In its discussion of this issue at paragraph 549, the FCC WCB states:

> Telecommunications traffic subject to reciprocal compensation under section 251(b)(5) excludes, infer *alia,* "traffic that is interstate or intrastate exchange access." The Commission has previously held that state commissions have authority to determine whether calls passing between LECs should be subject to access charges or reciprocal compensation for those areas where the LECs' service areas do not overlap.

Also in paragraph 549, the WCB notes that carriers may advocate alternative payment, regimes in the *Intercarrier* Compensation *NPRM.*[11]

This Commission has thoroughly explained the relationships of 47 C.F.R Sections 51.701 and 51.703, and Ohio's access regime in the *GNAPs Consolidated Arbitration* award. In our finding in this award relative to this same issue addressed in the aforementioned proceeding, we reminded the parties that traffic from one local calling area to another local calling area in the same LATA is normally intraLATA exchange access, and traffic from

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7 The Commission issued local service guidelines in *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Related Matters,* Case No. 95-845-TP-COI (Appendix A, Entry on Rehearing issued February 20,1997).

8 In the *GNAPs Consolidated Arbitration* Award and Entry on Rehearing we laid the correct foundation for our conclusions *(GNAPs Consolidated Arbitration* Award, at 6-8; *GNAPs Consolidated Arbitmtion* Entry on Rehearing, at 3-4).

9 Although we are not obligated to be consistent with the WCB's *Virginia Arbitrution Order,* we compare what we find to the WCBs Order in an attempt to provide depth and clarity to our Award.

10 See Finding 10 in the August 15, 2002, Commission Entry for *In the Matter of the Petition* d *Global NAPs, Inc.* for *Arbitration* d *Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio,* Case No .01-3096-TP-ARB.

11 *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

one local calling area to another local calling area in a different LATA is interLATA exchange access (*GNAPs Consolidated Arbitration* Award at 7). Also, we stated that exchange access traffic is subject to intrastate and interstate transport and termination charges in the State of Ohio (*Id.*). Thus, Verizon may charge its TELRIC rate for transport, which is actually an access charge for compensation purposes, from a local calling area where Global has no POI to Global's POI in a distant local calling area. The only safe harbor from this is when a call is originated and terminated in the same local calling area, and exchanged at the LECs' POI(s) within the same LATA. As LSG IV.C states:

> As NECs establish operations within individual ILEC service areas, the perimeter of ILEC local calling areas, as revised to reflect EAS, shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end, shall be treated as a local call. The Commission shall specify the date upon which a NEC is deemed operational in an ILEC local calling area in effectuating this guideline. Nothing in these guidelines would preclude the Commission from deciding on a case-by-case basis that an ILEC's local calling area should be expanded, thereby expanding the definition in the section for what should be treated as a local call for traffic termination compensation purposes.

For the reasons discussed above, the panel's recommendation for Issue 2 consistent with our award and entry on rehearing in the *GNAPs Consolidated Arbitration*, and the rules and precedent upon which they are based. Therefore, we adopt the panel's recommendation. Accordingly, Verizon is permitted to charge its TELRIC rate to: transport traffic beyond a local calling area where Global has no POI to a distant POI in another local calling area, provided the call does not originate and terminate in the same local calling area.[12]

Regarding the disputed interconnection agreement language for Issues 1 and 2, we decline to adopt either party's proposed language in its entirety as neither of the proposals is entirely compliant with our award and the rules, guidelines, and precedent upon which it is based. Therefore, Verizon and Global are directed to develop interconnection, language consistent with our award above, and then submit it to the Commission for, approval within the applicable time frame.

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12 To address Verizon's exception related to "exclusively local traffic" and "long haul calls," although it was not explicitly stated in that Award, LSG *N.C.*, our rule detailing local and toll traffic determination for reciprocal compensation purposes still applied. Also, as outlined earlier, pursuant *to* LSG IV.C, calls' originating and terminating in the same local calling area are *to* be treated as local for reciprocal compensation purposes, even if they are "long haul calls."

Issue 4 Can GNAPs assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?

The Panel's Recommendation

The panel found that this issue is tied to Issue 3. In Issue 3 the panel recommended that GNAPs could define its own local calling areas consistent with the Commission's Local Service Guideline II.D.2. In this issue, the panel found that one way that GNAPs plans to define its own local calling areas is through the use of NXX codes homed in central office switches outside of the customer's local calling area also known as virtual NXX. The panel recommended, consistent with several previous arbitration decisions, that the appropriate intercarrier compensation for the use of virtual NXX can be found in the Commission's Local Service Guideline IV(C) which, as pertinent, states:

C. Local and Toll Traffic Determination

> As NECs establish operations within individual ILEC service areas, the perimeter of ILEC local calling area, as revised to reflect EAS [extended area service], shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end-user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end shall be treated as a local call.

Furthermore, the panel found that Verizon's local calling areas, as revised to reflect EAS, shall be used to determine whether a call is local for the purpose of intercarrier local traffic compensation. The panel also agreed with GNAPs that the language in the FCC's ISP Remand Order specially preempts state commissions from addressing creating new compensation arrangements for intercamer compensation ISP-bound traffic (as opposed to interpreting and enforcing pre-existing contractual provisions). Accordingly, the panel maintains that the local service guidelines are the appropriate demarcation of intercarrier compensation for all non-ISP calls The panel noted its concerns with number portability with virtual NXX service and reminded GNAPs that it is required to provide local number portability consistent with the Commission's Local Service Guideline XIV(A), and that, GNAPs must deploy its virtual NXX .services in a manner compliant with this rule and the FCC d e s regarding number assignment and number pooling in FCC Docket 99-200.

GNAPs' Exceptions

In its exceptions, GNAPs argues that the panel erred by not recommending that GNAPs be allowed to assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides (GNAPs Exceptions at 13). GNAPs applauds the panel for acknowledging that the language in the FCC's ISP Remand Order specially preempts state commissions from addressing intercarrier compensation ISP-bound traffic (Id. at 13). GNAPs exception is, therefore narrowed to non-ISP bound traffic only. According to GNAPs, the panel's decision was consistent with prior decisions made in Ohio. GNAPs believes however, that these

decisions are out of step with the FCC's interpretations and the policies in effect in other states *(Id.)*.

GNAPs argues that the panel report is inconsistent with the FCC WCB's Virginia Arbitration Order *(Id.* at 13). It urges the Commission to issue an award consistent with that decision, in which the FCC WCB authorized CLECs to use non-geographically correlated NXXs *(Id.* at *14)*. GNAPs contends that there is no reason to ignore the guidance the FCC WCB provided in its Virginia Arbitration Order, but there is sufficient reason to vary from Ohio precedent in light of the FCC's order providing additional guidance in interpreting federal law *(Id.* at 15). In addition, GNAPs claims the panel. report conflicts with the goal of promoting competition *(Id.* at 16).

Verizon's Reply

In its reply, Verizon contends that neither the Virginia arbitration order nor GNAPs' arguments provide a basis for disregarding the Commission's rules requiring use of ILEC calling areas to distinguish local and toll calls for purposes of intercarrier compensation (Verizon's Reply at 8). According to Verizon, both federal and Ohio law require carriers to look behind the NPA-NXX to the actual originating and terminating points of the call to determine intercamer compensation (*Id.*). Verizon asserts that GNAPs' arguments confuse the rating of calls for the purpose of assessing retail end-user charges and the treatment of *calls* for intercarrier compensation purposes *(Id.)*.

In Verizon's view, GNAPs's contention that the Virginia arbitration order amounts to a binding legal precedent that would require a *change* in the panel's recommendation! regarding Issue 4 is simply mistaken *(Id.* at 9). In the Virginia arbitration order, says' Verizon, the WCB based its decision *to* adopt the petitioner's proposed use of NPA-NXX codes to rate calls on its review of the record, which it mistakenly claimed lacked a basis for concluding that the parties had identified any other viable way to rate *calls (Id.* at 10). However, the WCB, notes Verizon, did not suggest that the legal standard, which looks to the actual originating and terminating points of the complete end-to-end communication, had changed. Verizon observes that this Commission's policy and precedent require the parties to use the physical end points and not the NPA-NXX codes alone. Noting that this: policy is consistent with federal law, Verizon argues that it need not and should not bel replaced by the GNAP's proposal *(Id.)*. Moreover, Verizon points out that the WCB's decision is subject to review by the FCC *(Id.* at *4)*.

In its reply, Verizon disputes GNAPs' contention that the application of the' Commission's rules and of the panel's recommendations would somehow place GNAPs at, a competitive disadvantage in offering its customers a toll-free calling service *(Id.* at 11). With respect to its virtual NXX service, says Verizon, GNAPs uses Verizon's network *to'* provide toll-free calling service without providing any compensation to Verizon for use of, its network while charging both its customers and Verizon *(Id.)*. Verizon believes that, GNAPs' proposal thus does not seek fair competition, but instead an opportunity for regulatory arbitrage *(Id.)*.

Arbitration Award

The Commission finds that the panel's recommendation is consistent with the Commission's Local Service Guidelines and Commission's awards in Case No. 01-724-TP-ARB, *In the Matter of Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms and Conditions,* and *Related Arrangements* with *Ameritech Ohio,,* and the GNAPs' Consolidated Arbitration. Therefore, we agree with, and will adopt, the panel's recommendations on Issue 4. Accordingly, we find that Verizon's local calling area, as revised to reflect EAS, shall be used to determine whether a *call* is local for the purpose of intercarrier local traffic compensation for non-ISP bound virtual NXX *calls.*

We reject GNAP's arguments that we must fashion our award in such a way as to be consistent with the FCC WCB's Virginia Arbitration Order, rather than follow our own past precedents and the panel's recommendations in this case. As discussed above in connection with Issues 1 and 2, the FCC WCB's *Virginia* Arbitration Order is neither a final decision nor a legally binding precedent in this case. We find that our Local Service Guidelines are the appropriate demarcation of intercarrier compensation for all non-ISP bound local calls. In fact, we note that the FCC's own rules specifically allow state commissions to define local calls for intercarrier compensation purposes.[13] This rule is cited by the WCB in a subsequent section of the WCB's Virginia Arbitration Order in its rejection of AT&T's proposal for LATA-wide reciprocal compensation.[14] The WCB further states that, "Accordingly, we decline to disturb the existing distinction in Virginia between those calls subject to access charges and those subject to reciprocal compensation."[15] Thus, while the Commission is not prohibiting the use of virtual NXX, subject to the requirements for number pooling and portability, the Commission is affirming that the intercarrier cornpensation for such calls are based on the geographic end points of the *call* as required by the Commission's local service guidelines and as permitted by the FCC rules.

Issue 7: Should two-way trunking be available to *GNAPs* at GNAPs' request?

Panel Recommendation

The panel agreed with both parties that GNAPs can use two-way trunks for interconnection. As to the operational and engineering aspect of two-way trunks between the parties, the panel noted that GNAPs did not provide any detailed testimony to support its proposed contract language for the operational and engineering aspect of two-way trunking. Therefore, the panel agreed with the testimony of Verizon's witness D' Amico which points out that because two carriers are sending traffic over the same trunk from the two ends, the actions of one affects the other. For that reason, concluded the panel, there must be a mutual agreement on the operational responsibilities and design parameters. Furthermore, the panel recommended that the parties should adopt the two-way trunking language that Verizon has proposed, finding it to be both nondiscriminatory and reasonable, and noting that it would delineate the same terms and conditions already

13 *Local Competition First Report and* Order, 12 FCC Rcd. at para. 1035.

14 FCC *Virginia Arbitration* Order, para. *549.*

15 *Id.*

established in a number of other Verizon interconnection agreements in Ohio. The panel found it necessary. however, to modify Verizon's operational and engineering requirements for two-way trunks in one respect. Consistent with the Commission's award, in 00-1188 (00-1188, at 40), the panel recommended that because an exchange of forecasts by both companies would help both parties in understanding traffic volumes, the reciprocal exchange of traffic forecasts on a regular basis should be adopted in the contract.

Verizon's Exceptions

Verizon takes issue with the panel's recommendation that the Commission should not adopt language, as set forth in Verizon's proposed Interconnection Attachment Section 2.4.4, that would require Global to forecast both its inbound and outbound traffic to Verizon (Verizon's Exceptions at 5). In its exceptions, Verizon argues in favor of this provision which the panel rejected, explaining that the reason it has proposed that Global should forecast both its inbound and outbound traffic to Verizon, is because Global would be the carrier in the best position to do so, while Verizon would have no basis for doing so (Id.). Verizon points out that its witness, Mr. D' Amico, testified that a CLEC, like Global, should provide Verizon with good-faith, non-binding forecasts of its inbound and outbound traffic forecasts to assist Verizon in planning and engineering Verizon's network for the benefit of all carriers that use Verizon's network and services (Id.). Mr. D' Amico, provided uncontradicted testimony, notes Verizon, that this information is only available, from the CLEC and that, without it, Verizon may not be able to meet all the demands for, trunks and other interconnection services. Verizon believes the panel should recommend adoption of Verizon's proposed language because: (1) this information, a forecast of inbound traffic Global expects to receive from Verizon, is necessary to ensure Verizon has adequate facilities in place, and (2) Global provided no factual basis to support its position (Id.).

Arbitration Award

The Commission agrees with the panel's recommendation on Issue 7. With regards to Verizon's exception to the panel's modification of the operational and engineering requirements for two-way trunks, the Commission takes this opportunity to clarify that each company is responsible for its own traffic forecast of its inbound and outbound, traffic. Furthermore, the Commission notes that GNAPs did not provide any exceptions or, replies to support its proposed contract language for the operational and engineering aspect of two-way trunking. Therefore, after considering all arguments raised as well as the panel's recommendation, and consistent with 00-1188, the Commission agrees that the reciprocal exchange of traffic forecasts by each party for its own inbound and outbound: traffic on a regular basis should be adopted in the contract

III. CONCLUSION:

We adopt all panel recommendations to which the parties did not file exceptions. Any exceptions raised that were not specifically addressed herein are denied. Based on the foregoing, Global and Verizon should incorporate the directives set forth within this

arbitration award within their interconnection agreement. Within 14 days of this arbitration award, Global and Verizon shall file in this docket their entire interconnection agreement for our review. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each shall file for Commission review of its version of, the language that it believes should be used in a Commission-approved interconnection. agreement.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On April 10,2002, Global filed with the Commission its petition for arbitration with Verizon pursuant to Section 252(b) of the Act. On May 6, 2002, Verizon filed its response to the arbitration petition.

(2) On May 30, 2002, the parties timely filed their arbitration packages.

(3) On June 6,2002, the arbitration hearing was held. Post hearing briefs were filed on June 27,2002.

(4) On July 22, 2002, the arbitration panel report was filed. It contained the panel's recommendations on each of the 12 issues presented for arbitration in this case.

(5) On July 29, 2002, Global and Verizon each timely filed their exceptions to the panel report. Verizon filed a reply to Global's exceptions on August 7,2002.

(6) To the extent set forth in this arbitration award, we adopt the recommendations of the arbitration panel as reasonable and just resolutions of the arbitration issues to which the parties took exception. All other panel recommendations to which the parties did not take exception should be adopted as just and reasonable resolutions to those issues. Any exceptions raised that we did not specifically address in this arbitration award are denied. Based on the foregoing, Global and Verizon should incorporate the directives set forth in this arbitration award within their interconnection agreement.

V. ORDER:

It is, therefore,

ORDERED, That Global and Verizon incorporate the directives as set forth in this arbitration award within their interconnection agreement. It is, further,

ORDERED, That, on or before September 19,2002, Global and Verizon file in this docket their entire interconnection agreement for our review. If the parties are unable to, agree upon an entire interconnection agreement within this time frame, each party shall

file for Commission review its version of the language that it believes should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That, within ten days of the filing of the interconnection agreement, any party or other interested persons may file written comments supporting or opposing the proposed interconnection agreement and that any party or other interested persons may: file responses to comments within five days thereafter. It is, further,

ORDERED, That any motions not expressly ruled on in this arbitration award are denied. It is, further,

ORDERED, That nothing in this arbitration award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this arbitration award does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate either party to the contract from the provisions of any state or federal law that prohibits the restraint of trade. It is, further,

ORDERED, That this docket, shall remain open until further order of the Commission. It is, further,

ORDERED, That a copy of this arbitration award be served upon Global and its counsel, Verizon and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

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Gary E. Vigorito
Secretary

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IN RE: Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc.

DOCKETNO. 2002-181-C; ORDER NO. 2002-619

South Carolina Public Service Commission

2002 *S.C. PUC LEXIS 9*

August 30,2002

[*1] Mignon L. Clyburn, Chairman

OPINION
ORDER ON ARBITRATION

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition of US LEC of South Carolina Inc. ("US LEC") for arbitration to establish an interconnection agreement with Verizon South Inc. ("Verizon South"), pursuant to Section 252(b) of the Telecommunications Act of 1996 (the "1996 Act"). In its petition for arbitration, US LEC initially raised nine issues. A Hearing on the issues raised in US LEC's Petition was scheduled for August 12, 2002. On or about August 5, 2002, the Commission was advised by the parties that, through negotiations that had continued after the Petition had been filed, they had resolved three of the nine issues initially presented for arbitration. The remaining issues address different aspects of their interconnection arrangements.

US LEC made a bona fide request far interconnection, services or network elements pursuant to section 252(a) ofthe 1996 Act on or about December 15, 2001. Pursuant to Section 252(b)(1), US LEC could bring a petition for arbitration of outstanding issues during the period from the 135th day to the 160th day after December 15, **[*2]** 2001. The Commission has 9 months, or until September 16,2002, to resolve the matters raised in the petition. ***See.*** 252(b)(4)(C) ofthe 1996 Act.

US LEC filed its Petition on or about May 24, 2002. Verizon filed its Response on June 18, 2002. Upon the filing of the Petition and Response, the Commission established a schedule and procedures for arbitration. See Commission Order No. 2002-483 dated June 25, 2002 as modified by the Commission in Order No. 2002-557, dated July 31, 2002. The parties in this matter filed testimony setting forth the outstanding issues to be arbitrated by the Commission.

In light of the parties' settlement of three of the initial nine issues, the parties agreed to submit the remaining issues to the Commission for consideration and resolution based on the pre-filed testimony and subsequent briefs. In that regard, US LEC presented the pre-filed direct and rebuttal testimony of Ms. Wanda G. Montano, Vice President, Regulatory and Industry Affairs for US LEC Corp., the parent company of US LEC of South Carolina Inc. and the pre-filed direct and rebuttal testimony of Mr. Frank R. Hoffmann, Jr., Senior Interconnection Manager for US LEC Corp., the parent company **[*3]** of US LEC of South Carolina Inc. Verizon South presented the pre-filed direct and surrebuttal testimony of Mr. Peter J. D'Amico, a Senior Product Manager in the Interconnection Product Management Group for Verizon Services Corporation and the pre-filed direct and surrebuttal testimony of Mr. Terry Haynes, a manager in the State Regulatory Policy and Planning Group for Verizon.

II. LEGAL STANDARDS AND PROCESSES FOR ARBITRATION UNDER THE 1996 ACT

The 1996 Act provides that parties negotiating an interconnection agreement have the duly to negotiate in good faith. n1 After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues. n2 The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved. n3 The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties." n4 A non-petitioning party to a negotiation under this section may respond **[*4]** to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition. n5 The I996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and the response. n6

n1 47 *U.S.C. § 251*(c)(1)

n2 47 *U.S.C. § 251*(b)(2).

n3 See *generally, 47 U.S.C. §§ 252*(b)(2)(A) and 252(b)(4).

n4 *47 U.S.C. § 252*(b)(2).

n5 *47 U.S.C. § 252*(b)(3).

n6 47 *U.S.C. § 252*(b)(4).

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, those sections then form the basis for arbitration. Once the Commission provides guidance on the unresolved [*5] issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval. n l

n747 *U.S.C. § 252*(e).

The purpose of this arbitration proceeding is the resolution by the Commission of the remaining disputed issues set forth in the Petition and Response. n8 Under the 1996 Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission ("FCC") regulations pursuant to Section 252; shall establish rates according to the provisions of Section 252(d) for interconnection, services, and network elements; and shall provide a schedule for implementation of the terms and conditions by the parties to the Agreement. n9

n8 *47 U.S.C. § 252*(b)(4)(c)

n9 47 *U.S.C. § 252*(c).

III. FINDINGS OF FACT

1. US LEC is a corporation organized and formed under the laws of the State of Delaware. US LEC is authorized by this Commission to provide local exchange service in South Carolina. US LEC was granted authority to provide facilities-based [*6] and resold local exchange and interexchange services in the State of South Carolina by this Commission on November 10, 1997, in Docket No. 97-300-C, Order No. 97-957. US LEC is. and at all relevant times has been, a "local exchange carrier" ("LEC") under the 1996 Act.

2. Venzon South is a comoration organized and formed under the laws of the State of Delaware, having an office at 1301 Gervais Street, Suite 825, Columbia, South Carolina 29201. Venzon South is authorized by this Commission to provide local exchange and other services within its franchised areas in South Carolina. Verizon South is, and at all relevant times has been, an "incumbent local exchange carrier" ("ILEC") under the terms of the 1996 Act.

3. US LEC has one switch located in Charleston, South Carolina. US LEC commenced facilities-basedoperations in May, 2002.

4. US LEC and Verizon began negotiations of an interconnection agreement but were unable to finalize all of the terms. Thus, this Commission was called upon to arbitrate the final unresolved terms of the interconnection agreement.

N. CONCLUSIONS OF LAW

A. GENERAL

This arbitration is being conducted pursuant to Section 252 of the Act. Pursuant [*7] to Section 252(b)(4)(A), we limit our consideration to the remaining issues set forth in the Petition and the Response.

The appropriate legal standard to be applied in this case is stated in Sections 252(c) and 252(d)(2) of the 1996 Act, as follows:

(c) Standards for Arbitration.—In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d)(2) . . .a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the [*8] other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

B. UNRESOLVED ISSUES

The remaining unresolved issues to be resolved by this Commission are identified as follows:

Issues 3 and 4 deal with whether the parties are obligated to pay each other reciprocal compensation for terminating calls to Voice Information Service Providers and whether US LEC can be required to construct a dedicated trunk for delivering Voice Information Services Traffic to providers served by Verizon South.

Issue 5 concerns whether the parties will continue to use the traditional "originating party"—"terminating party" nomenclature in widespread use throughout the industry in connection with the exchange of traffic or whether Verizon South can introduce the entirely new term of a "receiving party" instead of a terminating party.

Issue 6 asks whether, in calculating their reciprocal compensation obligations, the parties will continue to utilize the NPA/NXX of the calling and called numbers as the factors determining whether a call is local or toll or whether they will be required to change [*9] that historical system and, instead, determine their obligations based on the physical end-points of the originating and terminating callers.

Issue 7 addresses the compensation framework that will govern the parties' reciprocal compensation obligations for terminating calls to Internet service providers ("ISPs") in the event the compensation framework in the FCC's Internet Order is vacated or reversed on appeal.

Finally, Issue 8 deals with whether Verizon South should be permitted to change its non-tariffed charges during the term of the agreement, *i.e.*, those fixed by the parties during their negotiations of the interconnection agreement, or must such charges remain fixed for the entire term.

These items are discussed separately below.

1. ISSUE 3 - Is US LEC entitled to reciprocal compensation for terminating "Voice Information Services" traffic? (Glossary, Section 2.75; Additional Services Attachment, Section 5.1; Interconnection Attachment, Section 7.3.7).

US LEC's Position: Yes. The traffic that Verizon South now seek. to define as Voice Information Services Traffic tits completely the definition of Reciprocal compensation Traffic that is eligible for reciprocal [*10] compensation.

Verizon South's Position: No. "Voice Information Services" traffic is defined to include only traffic that is not subject to reciprocal compensation under current law.

Discussion:

At issue is whether US LEC—and Verizon South, for thatmatter—is entitled to be paid reciprocal compensation for terminating "Voice Information Services" traffic. As stated in US LEC's Petition, and in the testimony of Ms. Wanda Montano, Verizon South seeks to defiue an entire category oftraffic that it urges the Commission to exclude from the parties' reciprocal compensation obligations. (Direct Prefiled Testimony of Ms. Wanda G. Montano (hereafter, "Montano Direct") at 11). Verizon South first defines "Voice Information Services Traffic" as a class of trafficthat "provides [i] recorded voice announcement information or [ii] a vocal discussion program open to the public." (Verizon South Template, Additional Services Attachment, Section 5.1). Verizon South then asks the Commission to exclude the defined class of traffic from its reciprocal compensation obligations.

The Commission finds that Verizon South's request lacks a sound basis in law or fact. We decline Verizon South's [*11] request and rule in favor of US LEC's position. We reject Verizon South's proposal because the categories of traffic that Verizon South defines as Voice Information Services Trafficfit completely within the definition of "Reciprocal Compensation Traffic" that is the basis for the parties' reciprocal compensation obligations. (Montano Direct at 12)

FCC rules define "Reciprocal Compensation" as an arrangement "in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications trafficthat originates on the network facilities of the other carrier." n10 Similarly, "Reciprocal Compensation Traffic" is defined as "telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access." n11

n10 FCC Rule 51.701(e). The FCC defines "telecommunications traffic" as "Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." FCC Rule 51.701(b)(1). [*12]

n11 Glossary, Section 2.75.

The categories of traffic included in the definition of "Voice Information Services Traffic" fit this definition of "Reciprocal Compensation Traffic." Whether the call is a [i] "recorded voice announcement information or [ii] a vocal discussion program open to the public," it is originated by a customer of one party on that party's network

and is terminated by a customer of the other party on that party's network. ***(Id.)*** Further, that type of call cannot be characterized as interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.

"Exchange Access" is defined in the Telecommunications Act as "the offering of access to telephone exchange services or facilities ***for the purpose of the origination or termination of telephone toll services.***" *47 U.S.C. § 153* (16) (emphasis added). The term has this same meaning for purposes of the parties' exchange of traffic in South Carolina because they have defined it in their proposed Interconnection Agreement as having "the meaning set forth in the [1996] Act." (Glossary at § 2.33).

"Information Access" is [*13] not definedin the 1996 Act; rather, it is defined in the Modified Final Judgment as "the provision of specialized exchange telecommunications services ***by a BOC*** in an exchange area in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider ofinfomation services." n12

n12 ***United States v. AT&T, 552 F. Supp. 131, 229 (D. D.C. 1982)***(emphasis added).

In turn, "Information Services" is defined in the 1996 Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, remeving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." ***(47 U.S.C. § 153***(20)).

US LEC properly interprets these definitions to exclude calls to Voice Information Service Providers, especially those providers who offer a service that offers "a vocal discussion program open to the **[*14]** public." That traffic does not fit the definition of "Information Service," and it typically involves a call that originates and terminates in the same local calling area. Indeed, the New York Public Service Commission addressed the issue and concluded that calls to so-called "chatlines" were eligible for reciprocal compensation. n13

n13 ***Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation,*** Docket No. 99-C-0529, ***Opinion and Order Concerning Reciprocal Compensation,*** Order No. 99-10 (N.Y.P.S.C., rel. Aug. 26, 1999).

We similarly find that, to the extent that US LEC provides service to a Voice Information Service Provider who offers "recorded voice announcement information," that service does not constitute "Information Access" because, by its terms, information access is defined as a service provided "by a BOC". The term does not apply when the service is provided by a competitive local exchange provider. We have not found any decision by the FCC or any state commission which holds that a call to a recorded voice announcement is not eligible for reciprocal compensation.

The FCC Wireline Competition Bureau ("Wireline Bureau") recently addressed this [*15] issue, albeit in a more generalized fashion. n14 Verizon South alleges here that Voice Information Services Traffic is excluded from the parties' reciprocal compensation obligations because it is traffic that falls within the scope of Section 251(g) of the Act, and pursuant to the FCC's ***ISP Remand Order*** n15, all **251(g)** traffic is excluded from reciprocal compensation. n16 In its arbitration before the Wireline Bureau, Verizon sought to define its reciprocal compensation obligations in exactly the same way that it does here — as excluding "interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access." n17 Verizon argued that all **251(g)** traffic fell within those defined areas of traffic and, therefore, should be excluded automatically from its reciprocal compensation obligations. n18 The Wireline Bureau rejected Verizon's argument, stating: "we disagree with Verizon's assertion that every form of traffic listed in Section 251(g) should be excluded from Section 251(b)(5) reciprocal compensation." n19 In essence, the Wireline Bureau concluded that Veriwn was relying entirely on the 251(g) arguments that had been rejected [*16] by the D.C. Circuit and "declined to adopt Verizon's contract proposals that appear to build on the logic that the court has now rejected." n20

n14 ***Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration,*** CC Docket No. 00-218, Memorandum Opinion and Order, PP39, 51-54 (Wireline Comp. Bureau, rel. July 17,2002) ***("FCC Arbitration Order").***

n15 ***Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic,*** CC Dkt Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) ***("ISP Remand Order'), rev'd. WorldCom v. FCC,*** 01-1218 (D.C. Cir., May 3,2002).

n16 ***Response of Verizon South Inc. to Petition For***

Arbitration Filed By US LEC of South Carolina Inc. at pp. 17–18.

n17 *Compare, FCC Arbitration Order* at P257, *quoting*, Verizon's Proposed Agreement to WorldCom, Part C, Interconnection Attach., § 7.3.1., with, Verizon South's Roposed Agreement to US LEC, Interconnection Attach., § 7.3.1. [*17]

n18 *FCC Arbitration* Order at P257.

n19 *Id.* at P261.

n20 *Id.*

We conclude that the same reasoning applies with equal force here: to the extent that Verizon South's argument against reciprocal compensation for Voice Information Services Traffic is predicated entirely on a faulty reading of the interplay between sections 251(b)(5) and 251(g), we reject it. n21 In short, the Commission finds that there is no legal or factual basis to exclude what Verizon South has defined as "Voice Information Services Traffic" and, as such, the parties shall be required to compensate each other for exchanging and terminating such traffic in accordance with US LEC's position on this issue.

n21 The Wireline Bureau did not reach the ultimate question of whether reciprocal compensation would be owed on calls to such information service providers as, for example, time and temperature recordings on the grounds that the parties agreed such services did not exist in Virginia and were not likely to be offered. (*FCC Arbitration Order* at P314.)

2. ISSUE 4 - Should US LEC he required to provide dedicated trunking at its own expense for Voice Information Service traffic that originates [*18] on its network for delivery to Voice Information Service providers served by Verizon South? (Additional Services Attachment, Section 5.3).

US LEC's Position: No.

Verizon South's Position: Yes.

Discussion:

Closely related to Issue 3 is the question raised in Issue 4 of whether US LEC should be required to provide dedicated trunking. at its own expense, for Voice Information Service traffic that originates on US LEC's network for delivery to Voice Information Service providers served by Verizon South.

The Commission concludes that Venzon South has stated no reasonable basis for its position that, if US LEC's customers seek to call Voice Information Services connected to Verizon Souths network, then US LEC must provide, at its own expense, a separate, dedicated trunk to carry that traffic. At the outset, we note Verizon South's concession that this situation is unlikely to arise in South Carolina because it does not provide (and does not plan to provide) the services for which it seeks to impose a separate trunking requirement on US LEC (Verizon South Response at 19). Verizon South's contention that it must nevertheless insist on separate trunking language because [*19] the issue may arise in other states where portions of interconnection agreements are subject to "'cross–border opt–in"' (Verizon South Response at 20) is simply an insufficient basis for this Commission adopt Verizon South's proposed resolution in light of the fact that the purported factual predicate for the proposed requirement is so remote here in Sonth Carolina. Further, Verizon South's contention is further weakened because its Brief to the Commission, Verizon Sonth states that it "cannot agree to delete the requirement for separate trunking - even though such trunking is unlikely to be required in South Carolina - lest carriers in other states claim that such an accommodation must be made available in each state where Verizon does provide those services." Brief at 8 (emphasis added). As this Commission is finding that Verizon South may not require US LEC to install dedicated *trunk*ing in these instances, Verizon South is not "agreeing" to delete this requirement but is in fact "ordered" by the Commission to delete this requirement.

Furthermore, we find that Verizon South's proposal would impose significant costs on US LEC, when Verizon South has not made any showing, first, [*20] that such a dedicated facility even is necessary or, second, that the amount of traffic generated by US LEC's customers and destined for Voice Information Services connected to Verizon South's network is sufficiently large as to warrant a separate trunk. (Montano Direct at 14–15).

Verizon South similarly has failed to demonstrate that its proposal is warranted because of an inability to address its billing concerns on its own network (Montano Direct at 15). We note that Verizon South presented no testimony on this issue even though it is the proponent of the separate trunking requirement that is opposed by US LEC. In its Brief to the Commission, Verizon South states that separate trunking of pay–per–call services is essential to permit Verizon South to control access to those services. Further, Verizon South submits that separate trunking is necessary to ensure that it does not bill reciprocal compensation for such traffic. We find that Verizon South's stated reasons are without merit, particularly in light of the fact that this Commission has found, in Issue 3 above, that reciprocal compensation is appropriate for calls to Voice Information Service Providers. We therefore find that [*21] Verizon South's proposal is unjustified, and the Commission rules in US LEC's favor on this issue and rejects Verizon South's proposed language.

3. ISSUE 5 – Should the term "terminating party" or the term "receiving party" he employed for purposes of traffic measurement and hilling over interconnection trunks? (Glossary, Section ***2.56;*** Interconnection Attachment, Sections 2.1.2, 8.5.2, and 8.5.3).

US LEC's Position: The term "terminatingparty" should be utilized, consistent with the plain language of Section 251(b)(5) and other sections of the agreement.

Verizon South's Position: The term "receivingparty" is more accurate and should he used.

Discussion:

Verizon South seeks use of the term "receivingparty" rather than "terminating party" in the interconnection agreement to indicate the carrier that terminates a call for purposes of traffic measurement and billing over interconnection hunks. According to Verizon South, the traffic that competing local exchange companies exchange with one another includes both conventional local traffic and traffic bound for enhanced service providers, including ISPs. While both parties agree that the receiving carrier terminates [*22] conventional local voice traffic, Verizon South does not agree that the receiving carrier terminates traffic delivered to ISPs and other enhanced service providers. Verizon South bases its position on the FCC's position that local carriers do not terminate such traffic; rather, such traffic is delivered to enhanced service providers, including ISPs, for onward transmission.

This Commission recognizes that throughout the industry, traffic has been referred to as either originating or terminating. Thus, in any call, there is an originating party served by an originating carrier and a terminating party served by a terminating carrier. n22 Even in the proposed interconnection agreement, this tradition is. for the most part, continued. Thus, in section 7.2 of the interconnection agreement, the parties agree that they will compensate each other for the "transport and termination" of Reciprocal Compensation Traffic. n23 In turn, "Reciprocal Compensation" is defined with respect to the "transportand termination" of "Reciprocal Compensation Traffic", which, itself, is defined with reference to traffic that is "terminated on the other Party's Network." n24

n22 Montano Direct at **15.**

n23 Id. **[*23]**

n24 Id.

Against this long–standing, historical backdrop. Verizon South proposes to interject the new term of a "receiving party" which Verizon South asserts is a more accurate term than "terminating party." Thus. in various sections of the Interconnection Attachment dealing with the delivery, measurement and billing of traffic, Verizon South no longer refers to the delivery or measurement of traffic from the "originating party" to the "terminating party"; rather, Verizon South refers to mffic delivered from the "originatingparty" to the "receiving party". Verizon South does not define the term "receivingparty".

The FCC has twice ruled that calls to ISPs are exempt from carriers' Section 251(b)(5) compensationobligations by stating that calls to ISPs do not terminate there. In both instances, the D.C. Circuit has remanded the FCC's decisions. While the FCC's decision is still valid in that the D.C. Circuit ***has*** not reversed the FCC's decision, **US** LEC asserts that there remains a distinct possibility that the FCC could conclude that, **in** fact, for purposes of reciprocal compensation, calls to ISPs ***do*** terminate at the ISP. US LEC argues that in the event that the FCC changes [*24] its ruling or a court overturns the FCC's ruling, then if US LEC has agreed that calls to ISPs **are** "received" hy US LEC but not "terminated" by US LEC, that Verizon South will assert that US LEC is not entitled to receive reciprocal compensation for terminatingcalls to ISPs. n25

n25 Montano Direct at **16–17.**

Upon consideration of the parties positions on this issue, we direct the parties to-continue to use the term "terminating party" for billing, measurement and compensation purposes throughout the agreement. As such, we reject Verizon South's proposition to include the new term of a "receiving party," in lien of the term "terminating party" when referring to the carrier that terminates a call for purposes of traffic measurement and billing over interconnection trunks. This Commission can find no compelling reason in Verizon South's position why its attempt to modify decades of industry practice should be accepted. Furthermore, Verizon South has **not** cited any authority indicating that its new interpretation has been ordered for use in an interconnection agreement by any regulatory body or tribunal. Like the FCC, this Commission has also ruled that ISP–bound traffic does not terminate **[*25]** at the ISP's server but continues to the ultimate Internet destination. However, this Commission is also aware, as noted by US LEC, that the FCC's determination is under review. This Commission agrees with US LEC's position that should the FCC's decision either be changed or reversed on appeal that it is more appropriate for the language in the interconnection agreement to contain terms of normal usage rather than new terms which are not used in the industry and which could give rise to further interpretation and potential litigation. **As** the situation presently stands, for purposes of traffic bound to enhanced service providers and ISPs, an exception to the reciprocal compensation rules applies. It is better to leave the exception in place, rather than to redefine the

exception by introducing new or novel terms and concepts. Therefore, we find that Verizon South's proposal is without precedent and lacks merit, and as such we adopt US LEC's recommendation and direct the parties to continue to employ the phrase "terminating party" in their interconnection agreement.

4. ISSUE 6 - (A) Should the parties be obligated to compensate each other for calls to numbers with NXX codes associated **[*26]** with the same local calling area? (Glossary, Section *2.56;* Interconnection Attachment, Section 7.2).

US LEC's Position: The determination of whether a call is rated as local or toll for billing purposes is based upon the NXX of the originating and terminating numbers. This practice must be maintained such that calls between an originating and terminating NXX, associated with the same local calling area, should continue to be rated as local. Under any scenario, Verizon South is responsible to bring traffic originated on its network to the US LEC-IP. The associated cost to Verizon South does not change based upon the location of US LEC's customers.

Verizon South's Position: Reciprocal compensation does not apply to interexchange traffic, defined by reference to the actual originating and terminating points of the complete end-to-end communications.

(B) Should Verizon South be able to charge originating access to **US LEC** on calls going to a particular **NXX** code if the customer assigned the NXX is located outside of the local calling area associated with that **NXX** code?

US LEC's Position: Verizon South should not be allowed to charge US LEC originating access for **[*27]** calls to an NXX code if the customers assigned that NXX is located outside of the local calling area to which that NXX is assigned.

Verizon South's Position: Intrastate and interstate access charges are governed by the parties' tariffs.

Issue No. 6 addresses two key aspects of the way the parties will compensate each other for exchanging Foreign Exchange, or FX, traffic. The first aspect is whether the parties should be obligated to pay each other reciprocal Compensation for calls to numbers with NXX codes associated with the same local calling area. US LEC contends that this practice has been the industry standard for decades and the parties should continue to base the rating, routing and inter-carrier compensation mechanisms on the NPA/NXX's of the calling and called parties. Verizon South, on the other hand, disagrees and argues that the parties' reciprocal compensation obligations should be determined by the actual beginning and end-points of the call at issue.

The second aspect of Issue 6 asks whether the parties should be able to charge originating access to each other on calls originating on their networks for termination to a customer with a particular NXX code if the [*28] customer assigned the NXX is physically located outside of the local calling area associated with that NXX code. US LEC's position is that if the Commission concludes that the parties should continue to base their inter-carrier compensation obligations on the NPA/NXX of the calling and called parties, then the physical location of those parties is irrelevant. Verizon South's position is that the parties' tariffs govern the result and that if the actual, physical location of the called party is outside of the local calling area to which the called party's NPA/NXX is assigned then, regardless of how the call is rated and routed, the call is an intraLATA toll call and originating access charges are due to the carrier sewing the originating party.

In considering these issues, the Commission recognizes and acknowledges that in a prior arbitration we concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. n26 We find that US LEC presents no compelling reason for this Commission to reverse that prior decision.

n26 *See, e.g., Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, Order on Arbitration, Order No. 2001-045 (Jan. 16, 2001). **[*29]**

In inviting this Commission to revisit its earlier decision on this issue, US LEC proposes that intercarrier compensation should apply to all calls that are "local" to the calling party, regardless of the physical location of the ultimate called party and that Verizon South should be prohibited from billing US LEC access charges for that traffic. n27 US LEC contends that its position is consistent with historical practice in the industry of rating a call as local or toll by referring to and comparing the NXX's of the calling and called parties and that its position also is consistent with the parties' practice of billing and paying each other reciprocal compensation for calls to their respective FX customers. US LEC also suggests that compensation for this traffic as local more accurately reflects the costs incurred by both parties, arguing that the costs Verizon South incurs to transport a call destined for a US LEC customer do not vary with the actual location of the called customer. n28 US LEC further contends that its proposal regarding intercarrier compensation for calls

to customers who use these " F X arrangements, among otherthings, will benefit those businesses, including [*30] ISPs, who find it desirable to obtain local numbers in several communities, while maintaining a limited number of physical locations, in order to reach and to serve a broader base of customers. Indeed, US LEC claims that one benefit of this type of service is that it provides wider, more reasonably priced access to the Internet through the use of local telephone numbers, especially in rural and sparsely populated areas of the state. Finally, US LEC argues that there is no practical, cost-effective, accurate way for the parties to segregate FX traffic from other locally dialed traffic.

n27 Montano Direct at 18.

n28 Montano Direct at 25.

Verizon South, on the other hand, asserts that the physical end-points of a call should determine whether it is local or toll, not whether the NXXs are associated with the same local calling area. Under Verizon South's position, the parties should be obligated to pay reciprocal compensation for calls to numbers with NXX codes associated with the same local calling area, only when the call actually terminates to the other party's end users physically located in the same local calling area. Verizon South argues that when the called party's physical [*31] location is not in the same rate center as the calling party then the communication is an intraLATA toll call and should be subject to access charges.

This issue centers on the treatment of a particular type of traffic, similar to traditional foreign exchange ("FX") service, but more broadly referred to as "virtual NXX" because it encompasses more flexible service alternatives that do not use FX network configurations. This service allows a customer (typically a business) to obtain a telephone number in a local calling area in which it is not physically located. n29 As far as the person calling that number is concerned, the caller is making a "local" call to a telephone number in the caller's local dialing area. but the party answering the call is actually located somewhere else. A business customer may wish to establish such a "virtual" presence in the second local calling area so that calls to the business customer from the businesses' own customers within the second local calling area are viewed as local calls by the businesses' own customers. n30

n29 Montano Direct at 21

n30 *Id.* at 21-23.

This Commission has already addressed this issue in a prior arbitration and [*32] that decision supports Verizon's position in that this Commission held that "reciprocal compensation is not due to calls placed to 'virtual NXX numbers as the calls do not terminate within the same local calling area in which the call originated." n31 The Commission squarely held that compensation for traffic depends on the end points of the call - that is, where it physically originates and terminates. In rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating number," the Commission noted that, "while the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a 'virtual NXX' number is not in the same local service area as the originating point of the call." n32

n31 *See Adelphio Order* at 7.

n32 *Id,* at 8.

The Commission finds that its prior resolution of this issue is correct. The FCC's rules have always made clear that reciprocal compensation under *47 U.S.C. § 251*(b)(5) "does not apply to the transport and termination of interstate or intrastate interexchange [*33] traffic." *Local Competition Order. 11 FCC Rcd at 16013. P1034.* n33 The FCC confirmed that result in its April, 2001, *ISP Remand Order,* in which it held that reciprocal compensation does not apply to "intentate or intrastate exchange access, information access or exchange services for such access." 47 C.F.R. § 51.701(b)(1). The FCC has made clear that this exclusion covers all interexchange communications: whenever a LEC provides service "in order to connect calls *that travel to points - both interstate ond intrastate - beyond the local exchange,"* it is providing an access service. *ISP Remand Order, 16 FCC Rcd at 9168, P37* (emphasis added). "Congress excluded all such access traffic from the purview of section 251(b)(5)." *Id.*

n33 This portion of the *Local Competition Order* has never been challenged and remains binding federal law.

It is undisputed that the calls at issue here "travel to points . . . beyond the local exchange." *Id.; see* Haynes Direct Testimony at l0. Accordingly, such traffic simply is not subject to reciprocal compensation under federal law, as this Commission has recognized. As [*34] described above, the Commission has already approved the result provided for by Verizon's proposed language on this issue and has squarely rejected the result proposed by US LEC. Indeed, the weight of other state commission authority is in agreement with this analysis, holding that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area. These additional state commissions include those in Ohio, n34 Florida, n35 Connecticut, n36 Illinois, n37 Texas, n38 Tennessee, n39 Georgia, n40 and Missouri. n41 The Commission is

also cognizant that some state commissions, as well as the FCC Wireline Bureau, have decided this "virtual NXX" issue differently that we have. However, we are not aware of any court ruling on this issue.

n34 *See* Arbitration Award, *Petition of Global NAPs, Inc. /or Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint, and Ameritech Ohio*, Case Nos. 01-2811-TP-ARB, *et al.*, at 8, 11 (Ohio PUC May 9,2002) *("Ohio Arbitration Order?. reh'g denied*, Entry on Rehearing, Case Nos. 01-281 I-TP-ARB, *et al.* (Ohio PUC July 18,2002). [*35]

n35 *See* Staff Memorandum, *Investigation into Appropriate Methods to Compensate Carriers /or Exchange Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, Issue 15, at 69, 72, 96-97 (Fla. PSC Nov. 21, 2001), approved at Florida PSC Agenda Conference (Dec. 5,2001).

n36 Decision, *DPUC Investigation of the Payment of Mutual Compensation/or Local Calls Carried over Foreign Exchange Service Facilities*, Docket No. 01-01-29, at 44 (Conn. Dep't Pub. Util. Control Jan. 30, 2002) ("The purpose of mutual compensation is to compensate the carrier for the cost of terminating a local call" *and "since these calls are not local*, they will not be eligible for mutual compensation.") (emphasis added)

n37 Arbitration Decision, *TDS Metrocom, Inc. Petition/or Arbitration of Interconnection Roles, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Co. d/b/a Ameritech Illinois Pursuant to Section 252(b) of the TelecommunicationsAct of 1996*, Docket No. 01-0338, at 48 (Ill. Commerce Comm'n Aug. 8, 2001); Arbitration Decision, *Level* 3 *Communications. Inc. Petition/or Arbitration Pursuant to Section 252(b) of the TelecommunicationsAct of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Arneritech Illinois*, Docket *No.* 00-0332, at 9 (Ill. Commerce Comm'n Aug. 30,2000) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation."). [*36]

n38 Revised Arbitration Award, *Proceeding* to *Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*. Docket No. 21982, at 18 (Tex. PUC Aug. 31, 2000) (finding FX-type traffic "not eligible for reciprocal compensation" to theextent it does not terminate within a mandatory local calling scope).

n39 Interim Order of Arbitration Award, *Petitionfor Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the TelecommunicationsAct of 1996*, Docket *No.* 99-00948, at 42-44 (Tenn. Regulatory Auth. June 25,2001).

n40 Final Order, *Generic Proceeding of Point of Interconnection and Virtual FX Issues*, Docket No. 13542-U, at 10-12 (Ga. PSC July 23, 2001) ("The Commission finds that reciprocal compensation is not due for Virtual FX traffic.").

n41 Arbitration Order, *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., /or Compulsory Arbitrotion of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. TO-2001-455, at 44 (Mo. PSC June 7,2001) (finding VFX traffic "not be classified as a local call"). [*37]

"Virtual FX" traffic—that is, traffic sent to a "Virtual NXX"—is, by definition, interexchange traffic. *See* Haynes Direct Testimony at 10. A "Virtual NXX" is an exchange code assigned to end users physically located in exchanges other than the one to which the code was assigned. *See id.* at 7. n42 Such a service would be valuable to customers that expect to receive a high volume of incoming calls from ILEC customers within the exchange of that NXX, because the CLEC's "Virtual NXX" arrangement allows such calls to be made without the imposition of a toll charge on the calling party. *Id.* at 7-8. In one common arrangement, a CLEC assigns an ISP that is collocated with its switch telephone numbers in every local calling area within a broad geographic area—a LATA, or an entire state, for example. The ISP would then be able to offer all of its subscribers a locally rated access number without having to establish more than a single physical presence in that geographic area. *Id.* If the ISP bad been assigned an NXX associated with the calling area in which it is actually located, many of those calls would be rated as toll calls. *Id.* at 8.

n42 *See also Adelphia Order* at 4. [*38]

The decision of the FCC's Wireline Competition Bureau in the *Virginia Arbitration Order n43*—in adopting language allowing the NPA-NXX of the called party to govern payment of reciprocal compensation—doesnot call our conclusion into question. The Bureau never addressed the basic question whether Virtual FX traffic is subject to reciprocal compensation under federal law. Instead, the Bureau simply suggested that, in the absence of a concrete proposal for distinguishing Virtual FX traffic from local traffic for billing purposes, the parties would not he compelled to give effect to that distinction, irrespective of the requirements of federal law.

Virginia Arbitration Order P301. The Bureau's failure to respect the limitations on Verizon's reciprocal compensation obligations was both inconsistent with federal law and unsupported on the record, hut in any event it has no application here, because, as discussed below, Verizon *has* presented evidence that carriers *can* accurately estimate the volume of FX and Virtual FX traffic exchanged between them. Thus, the *Virginia Arbitration* provides no basis for failing to implement the clear requirements of federal law in South **[*39]** Carolina. n44

n43 Memorandum Opinion and Order, ***Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,*** CC Docket Nos. 00-218 *et al.*, DA 02-1731 (Wireline Comp. Bur. rel. July 17, 2002) (*"Virginia Arbitration Order"*) (Verizon App. Tab 8).

n44 The FCC recently released an order recognizing that when an interconnecting carrier implements an interconnection arrangement that makes calls by an incumbent's customers "appear local and involve no toll charges to callers in those areas" that the incumbent may assess appropriate charges on the interconnecting carrier. *See* Order on Review, ***Mountain Communications, Inc. v. Qwest Communications International. Inc.***, FCC 02-220, EB-00-MD-017, P5 (rel. July 25, 2002), ***aff'g, Mountain Communications. Inc. v. Qwest Communications International, Inc., DA 02-250, Memorandum Opinion and Order, 17 FCC Rcd 2091 (2002).*** The *Virginia Arbitration Order* was released before the ***Mountain Communications*** decision, and the Bureau's decision cannot be reconciled with that unanimous decision of the full Federal Communications Commission. **[*40]**

Even if federal law did not clearly resolve this question—which it does—the Commission adopts Verizon's proposal because it is consistent with sound regulatory policy. As US LEC's website describes, when a US LEC customer subscribes to a Virtual FX service, it pays an extra charge to US LEC in order to be able to receive calls originated in a distant exchange without a toll charge being imposed on the calling party. *See* US LEC's "Enhanced Local Services," at 2 (US LEC describing "Foreign exchange" as involving "an inbound-only call, toll-free to the calling patty, which is paid for by the called party"). n45 US LEC is thus paid by *its* subscriber precisely to ensure that Verizon will not be paid any toll charges by *its* subscriber for an interexchange call. There is nothing necessarily wrong with that, so long as US LEC compensates Verizon appropriately for the service that Verizon continues to provide. But it would be deeply inconsistent with regulatory policy and basic fairness to require Verizon to *pay* US LEC, when Verizon continues to bear the same costs of originating the interexchange call, when Verizon is deprived of the toll charges that would ordinarily **[*41]** apply, and when US LEC is already receiving compensation from its customers. US LEC's proposal thus amounts to an extraordinarily clear example of attempted regulatory arbitrage—that is, a situation in which US LEC will earn revenues (both from its subscribers and from Verizon) while Verizon is forced to bear the bulk of the real costs of providing the service and is deprived of toll revenues to boot.

n45 Available at http://www.uslec.com/local_service.htm.

Under these circumstances, the only sensible result is that US LEC should compensate Verizon for the services that it continues to provide—*i.e.*, Veriwn should continue to receive at least a ponion of the toll charges that it would otherwise receive from its customer in the form of access charges paid by US LEC. n46 Indeed, there is no situation, and US LEC cites none, in which a carrier both charges its subscriber toll charges—as US LEC admits it does—and receives inter-carrier compensation In every such circumstance, the inter-carrier compensation flows the other way, from the carrier who is receiving the toll charges to the carrier who is providing the access but receiving no revenue from its subscriber for the [*42] call.

n46 By the same token, if a US LEC customer originates a call to a Verizon FX customer, Verizon should pay intrastate access charges.

This is not only a matter of fairness between the parties, it is also fundamental to the structure of basic service rates, and the "decades-old public policy goal of assuring the widespread availability of affordable telephone service." Haynes Direct Testimony at 6. Traditionally, basic local exchange rates only entitle an end user to service *within the exchange. Id.* at 5. If the end user wishes to make a call outside the end user's local calling area, the end-user must generally pay a toll charge, which the LEC either keeps (if it is providing the interexchange service) or receives a pan of in the form of access charges. Id. at 5-6. Some dialing arrangements—such as toll-free 800 numbers—allow the calling party to make an interexchange call without incurring the toll charges that would normally apply. *Id.* at 6. But the LEC continues to be compensated for providing access to the local exchange—in the case of 800 numbers, through access charges. Haynes Rebuttal Testimony at 11-12.

We find that federal law, sound policy, and **[*43]** basic fairness compel adoption of Verizon's proposed lan-

LEC affiliate or Verizon affiliate which is not bound by the 1996 Act.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh, Executive Director